

January 25, 2021

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

Re: *Seven County Infrastructure Coalition – Rail Construction & Operation Exemption –
In Utah, Carbon, Duchesne, and Uintah Counties, Utah*, STB Docket No. FD 36284

Dear Ms. Brown:

I am attaching for filing in the above-captioned proceeding the Motion for Extension of Time and Petition for Reconsideration of Eagle County, Colorado.

Thank you very much for your attention to this matter.

Sincerely,



Allison I. Fultz
Counsel for Eagle County

Enclosures

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 36284

**SEVEN COUNTY INFRASTRUCTURE COALITION –
RAIL CONSTRUCTION & OPERATION EXEMPTION –
IN UTAH, CARBON, DUCHESNE, AND Uintah COUNTIES, UTAH**

**MOTION FOR EXTENSION OF TIME
AND
PETITION FOR RECONSIDERATION**

Communications with respect to this pleading
should be addressed to:

Allison I. Fultz
Stephen H. Kaplan
Robert W. Randall
Christian L. Alexander
Kaplan Kirsch & Rockwell LLC
1634 I St., N.W.
Suite 300
Washington, DC 20006
(202) 955-5600
afultz@kaplankirsch.com
skaplan@kaplankirsch.com
brandall@kaplankirsch.com
calexander@kaplankirsch.com

Counsel for Eagle County

Dated: January 25, 2021

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 36284

**SEVEN COUNTY INFRASTRUCTURE COALITION –
RAIL CONSTRUCTION & OPERATION EXEMPTION –
IN UTAH, CARBON, DUCHESNE, AND UINTAH COUNTIES, UTAH**

**MOTION FOR EXTENSION OF TIME
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Eagle County, CO (“Eagle County”), through undersigned counsel, hereby submits this Motion for Extension of Time and Petition for Reconsideration in the above-referenced proceeding. Eagle County engaged counsel in the last week and, because issues presented in the instant proceeding are potentially linked to the analysis of impacts in connection with the Notice of Exemption filed by the Colorado, Midland & Pacific Railway Company (“CMP”) on December 31, 2020, in Docket No. FD 36471, Eagle County requests the relief set forth below to permit this Board to create a complete record addressing the anticipated impacts of both proposals. Eagle County entered its appearance in Docket No. FD 36471 on January 19, 2021. Eagle County has received communications from a number of other local governments and other stakeholders in Colorado who have indicated that they also intend to participate in this proceeding.

**MOTION TO EXTEND TIME TO COMMENT ON DRAFT ENVIRONMENTAL
IMPACT STATEMENT**

Eagle County seeks a 30 day extension of the comment period in this proceeding, to February 27, 2021, because CMP’s filing of its Notice of Exemption in FD 36471 on December 31, 2020, materially alters the necessary scope of the evaluation of the anticipated impacts of the

instant proposal. The Seven County Infrastructure Coalition’s (“Coalition”) desired route for the Uinta Basin line would intersect with a line of railroad owned by Union Pacific (“UP”) in Kyune, Utah, and rail traffic originating in the Uinta Basin would proceed east along that line (*Seven County Infrastructure Coalition – Rail Construction & Operation Exemption – In Utah, Carbon, Duchesne, and Uintah Counties, Utah*, Petition for Exemption, STB Docket No. FD 36284, at 9 (Filed May 29, 2020) (“Coalition Petition”)). The line at issue in FD 36471, Union Pacific’s (“UP”) Tennessee Pass Line, joins the same UP line near Dotsero, Colorado (*KCVN, LLC and Colorado Pacific R.R., LLC – Feeder Line Application – Line of Union Pacific R.R. Co., Located in Pueblo, Fremont, Chaffee, Lake and Eagle Counties, Colo.*, Feeder Line Application, STB Docket No. FD 36386, at 4 (Filed Feb. 14, 2020)). The Tennessee Pass Line is steeply graded and traverses Eagle County through a narrow canyon subject to frequent rockfall. No rail freight or passenger rail traffic has operated on the Tennessee Pass Line for over twenty years (*Colorado, Midland & Pacific Ry. Co. – Lease and Operation Exemption Containing Interchange Commitment – Union Pacific R.R. Co.*, Notice of Exemption, STB Docket No. FD 36471, at 5 (Filed Dec. 31, 2020)). Because a common rail line links the southern terminus of the proposed Uinta Basin line and the western terminus of the Tennessee Pass Line, traffic from the Uinta Basin, which is proposed to consist primarily of crude oil and fracking sand (Coalition Petition at 9), could travel over the Tennessee Pass Line if both proposals move forward.

After decades of inactivity, the Tennessee Pass Line has seen two proposals to reactivate rail freight service in the past year: (a) the first, by KCVN, LLC, and Colorado Pacific Railroad, LLC, filed on February 14, 2020, involved a feeder line application that this Board rejected, without prejudice, as incomplete on March 13, 2020 (*KCVN, LLC and Colorado Pacific R.R., LLC – Feeder Line Application – Line of Union Pacific R.R. Co., Located in Pueblo, Fremont,*

Chaffee, Lake and Eagle Counties, Colo., STB Docket No. FD 36386 (Service Date March 13, 2020), slip op. at 7); (b) the second is Notice of Exemption filed by CMP in FD 36471 on December 31, 2020. The timing is significant here, because the Coalition filed its Petition for Exemption for the proposed Uinta Basin greenfield rail construction project on May 29, 2020, and the Board issued its Draft Environmental Impact Statement (“DEIS”) in that proceeding on October 30, 2020, in the period after the Board had denied the feeder line application in FD 36386, but before CMP filed its Notice of Exemption in FD 36471. Accordingly, there was no pending proposal involving the reintroduction of freight rail service on the Tennessee Pass Line when CMP filed its Petition or when the STB issued the DEIS, and Eagle County received constructive notice of CMP’s proposed transaction to lease the line from UP only on New Year’s Eve of 2020.

The significant safety concerns presented by the proposed reintroduction of freight rail traffic on the Tennessee Pass Line and the potential for that line to carry crude oil unit trains from the Uinta Basin demand that affected communities and other stakeholders have the opportunity to evaluate any proposal that relates to the resumption of service on a line with the potential to connect to the Tennessee Pass Line. Localities along the corridor must have the opportunity to thoroughly evaluate the potential impacts on their residents and other constituents. Because of the short window between CMP’s filing of its Notice of Exemption in FD 36471 and the deadline for commenting on the DEIS in FD 36284, compounded by the difficulties in communication and coordination due to the ongoing COVID-19 pandemic, a 30 day extension of the DEIS public comment period is reasonable and will not prejudice any party or impose administrative burdens on the Board or parties to this proceeding.

PETITION FOR RECONSIDERATION OF THE BOARD'S JANUARY 5, 2021 DECISION

In accordance with 49 C.F.R. § 1115.3(a), Eagle County respectfully petitions this Board to reconsider its unusual January 5, 2021, Decision in this matter (the “*Jan. 5 Decision*”), in which it determined that the “transportation merits” of the Coalition’s proposed construction of a new 85-mile long rail line, a greenfield development, satisfy the criteria for exemption from the prior approval requirements of 49 U.S.C. § 10901 (*Seven County Infrastructure Coalition – Rail Construction & Operation Exemption – In Utah, Carbon, Duchesne, and Uintah Counties, Utah*, Petition for Exemption, STB Docket No. FD 36284 (Service Date Jan. 5, 2021), slip op. at 11), while leaving analysis of the potential environmental impacts of the proposal to be determined pending the completion of environmental review.

Under 49 U.S.C. § 10502(a), the Board “shall exempt” a transaction from the requirements of 49 U.S.C. § 10901 when it finds the application in whole or in part of a provision of this part

- (1) is not necessary to carry out the transportation policy of section 10101 of this title;
and
- (2) either (A) the transaction or service is of limited scope; or (B) the application in whole or in part of the provision is not needed to protect shippers from the abuse of market power. (Emphasis added.)

Although the Board focused its discussion on the lack of potential for market power abuse under 49 U.S.C. § 10502(a)(2)(B) to support its decision (*Jan. 5 Decision* at 4, 9), the Board is required to evaluate both elements of 49 U.S.C. § 10502(a) and failed to address other policy priorities of Section 10101 that it is also required to take into account. Most relevant here, 49 U.S.C. § 10101(8) requires that railroads “operate transportation facilities and equipment without detriment to the public health and safety.” By performing only part of the necessary analysis to justify an exemption, the Board has essentially pre-judged this case by failing to

consider whether unit trains of crude oil traveling through mountainous terrain will not incur any “detriment to the public health and safety.”

The Board’s rules at 49 C.F.R. § 1115.3(b) require that a petition for reconsideration demonstrate that (1) the prior action will be affected materially because of new evidence or changed circumstances or (2) the prior action involves material error.

Here, two elements of the recently filed proposal to reinstate freight rail service on the Tennessee Pass Line demand that the Board reconsider the *Jan. 5 Decision*. First, CMP’s December 31, 2020, filing of its Notice of Exemption to propose the reactivation of freight service in the Tennessee Pass corridor constitutes a materially changed circumstance that this Board must take into account in considering the potential impacts of granting the Coalition’s Petition for an exemption to construct a new rail line in the Uinta Basin.

Second, in addition to potential safety and operational impacts on the Tennessee Pass Line, CMP is a wholly owned subsidiary of the Coalition’s proposed rail operator, Rio Grande Pacific (“RGP”). Rio Grande Pacific Press Release, December 31, 2020, available at: <https://rgpc.com/news/colorado-midland-pacific-railway-companys-cmp-commercial-agreement-on-the-tennessee-pass-line/>. Given the existing junction from the Tennessee Pass Line to the UP main line to which the Uinta Basin line proposes to connect, the potential for coordinated operations by affiliated railroads on the proposed Uinta Basin line and reactivated Tennessee Pass Line presents a question of market competition and whether the exemption criterion at Section 10101(1), “to allow, to the maximum extent possible, competition and the demand for services to establish reasonable rates for transportation by rail” is, in fact, satisfied.

Eagle County also adopts the arguments Chairman Oberman presented in his dissent to the *Jan. 5 Decision*, summed up succinctly in his preliminary remarks: “the Board should not

make a finding now that an application *is not* necessary and should not and cannot reach a conclusion on the transportation merits, even preliminarily, prior to completing the environmental review and resolving issues concerning the project's financial viability" (*Jan. 5 Decision*, dissent, at 11).

CONCLUSION

For the reasons set forth above, Eagle County respectfully requests that this Board extend the period for comment on the DEIS to February 27, 2021, and that it reconsider its Decision of January 5, 2021, in light of newly emerged material facts that are relevant to this matter.

Respectfully submitted,



Allison I. Fultz
Stephen H. Kaplan
Robert W. Randall
Christian L. Alexander
Kaplan Kirsch & Rockwell LLC
1634 I St., N.W.
Suite 300
Washington, DC 20006
(202) 955-5600
afultz@kaplankirsch.com
skaplan@kaplankirsch.com
brandall@kaplankirsch.com
calexander@kaplankirsch.com

Counsel for Eagle County

Dated: January 25, 2021

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused to be served a copy of the foregoing MOTION FOR EXTENSION OF TIME AND PETITION FOR RECONSIDERATION, upon the following parties of record and non-parties in this proceeding by electronic mail:



Allison I. Fultz

Dated: January 25, 2021

PARTIES OF RECORD

Darrell Fordham
511 South 600 East
Lehi, UT 84043
darrellfordham@hotmail.com

Kathryn Kusske Floyd
600 Massachusetts Ave NW
Washington, DC 20001
kkfloyd@venable.com

Julie Mach
419 H St
Salida, CO 81201
juliemach@cmc.org

Thomas F. McFarland
208 South LaSalle Street, Suite 1666
Chicago, IL, IL 60604-1228
mcfarland@aol.com

Alan H. Robinson
33700 Mt Harvard Circle
Buena Vista, CO 81211
robinsonalanh@gmail.com

Wendy Park
1212 Broadway #800
Oakland, CA 94612
wpark@biologicaldiversity.org

P.T. Wood
448 E 1st Street
Salida, CO 81201
pt.wood@salidaelected.com

NON-PARTIES

Honorable J. Stuart Adams
350 North State Street, Suite 320
Salt Lake City, UT 84114
jsadams@le.utah.gov

Honorable Spencer J. Cox
350 North State Street, Suite 220
P.O. Box 142325
Salt Lake City, UT 84114-2325
jsadams@le.utah.gov

Margaret K. Fawal
600 Massachusetts Avenue, NW,
Washington, DC 20001
MKFawal@Venable.com

Honorable Gary R. Herbert
350 North State Street, Suite 220
P.O. Box 142325
Salt Lake City, UT 84114-2325
jsadams@le.utah.gov

Honorable Chris Stewart
2242 Rayburn House Office Building
Washington, DC 20515
adam.stewart@mail.house.gov

Honorable Brad Wilson
350 North State Street, Suite 350
Salt Lake City, UT 84103
jsadams@le.utah.gov

Honorable Rob Bishop
123 Cannon Building
Washington, DC 20515
adam.stewart@mail.house.gov

Honorable John Curtis
125 Cannon Office Building
Washington, DC 20515
adam.stewart@mail.house.gov

Honorable Gary R. Herbert
State of Utah Office of The Governor
Salt Lake City, UT 84114-2220
jsadams@le.utah.gov

Honorable Mike Lee
316A Russell Senate Office Building
Washington, DC 20510
adam.stewart@mail.house.gov

Honorable Mitt Romney
124 Russell Senate Office Building
Washington, DC 20510
adam.stewart@mail.house.gov